IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.19 OF 2005

Manharlal Narbheram Parekh ...Petitioner.

vs.

Smt.Brijraj Nandini Deviba Gohil & Another. ...Respondents.

Mr.N.N.Bhadrashete, for Petitioner.

Mr.R.Kothari i/b. M/s.Mulla & Mulla, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 21st February, 2005.

P.C.:-

1. The petitioner, by this petition which is filed under Section 9 of the Arbitration and Conciliation Act,1996, claims an interim order directing the

respondents to reserve and/or keep unencumbered six plots or pieces of land each admeasuring 400 sq.yards in Neelam Baug Palace at Village Vadhva, Bhavnagar, Gujarat. The claim of the petitioner is based on the agreement dated 28th November,1977. The relevant clauses in the agreement are clause (1) and Clause (2) which read as follows:-

> (1) That DR.VIRBHADRASINGHJI KRISHNAKUMAR SINGHJI GOHIL of Bhavnagar has agreed to remunerate to the said SHRI MANHARBHAI NARBHERAM PAREKH and SHRI MANHARBHAI NARBHERAM PAREKH has agreed to receive by arranging to allot six plots or pieces of land admeasuring approximately 400 sq.yards each, so as in all not to be less than 2400 sq.yds., in Adarsh Co-operative Housing Society Ltd., Bhavnagar or in a suitable plot in the adjoining area of Nilam Baug Palace Grounds, Bhavnagar.
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> (2) That it is hereby clarified that if the amount due from MESSRS.ADARSH CO-OPERATIVE HOUSING SOCIETY LIMITED, is mutually not received, the amount of remuneration or consideration agreed to as above be paid to

SHRI MANHARBHAI NARBHERAM PAREKH would not become payable.

It is apparent from the above quoted clauses that the liability, for giving land to the petitioner, of the Respondents was to be arrived at on the Respondents receiving the payment from Adarsh Co-operative Housing Society. The petitioner wrote a letter to the respondents stating that there are reasons to believe that the respondents have received the payment from Adarsh Co-operative Housing Society. However, that fact has been denied by the Respondents. No attempt has been made by the petitioner to find out from Adarsh Co-operative Housing Society as to whether they have made payment to the Respondents. In the petition, a statement has been made that a member of that society has told the petitioner that the payment has been made to the Respondents, but the name of that person is not disclosed.

2. In my opinion, the proper course of action for the petitioner was to approach that Co-operative Society so as to find out whether the payment has been made by them. In the absence of any communication from the Society, it is not possible to believe that there is

reasonable ground for the petitioner to assume that Adarsh Co-operative Housing Society has made payment to the Respondents. The petitioner does not have a prima facie case, therefore, the petitioner is not entitled to any interim order that has been claimed in the petition. The petition is therefore, disposed of.

21.2.2005 ----